

Appln. Serial No. 09/943,871
Amendment Dated September 19, 2005
Reply to Office Action Mailed June 17, 2005

AMENDMENTS TO THE DRAWINGS

A replacement sheet containing revised Fig. 1 is attached to add boxes labeled "RNC" in the GERAN block 12 and UTRAN block 14.

REMARKS

In the Office Action dated June 17, 2005, the drawings were objected to; claims 1, 9, 10, 14, 20, 24, and 25 were rejected under 35 U.S.C. § 102 over U.S. Patent No. 6,748,246 (Khullar); claims 2-4, 15-17, and 22 were rejected under § 103 over Khullar in view of U.S. Patent No. 6,772,112 (Ejzak); claims 5-8, 11, 18, 21, and 23 were rejected under § 103 over Khullar in view of U.S. Patent No. 6,848,008 (Sevanto); claim 12 was rejected under § 103 over Khullar in view of Ejzak; claim 13 was rejected under § 103 over Khullar in view of U.S. Patent No. 6,870,858 (Sebire); claim 19 was rejected under § 103 over Khullar in view of Sevanto and U.S. Patent Application Publication No. 2004/0017798 (Hurtta); claims 26 and 28 were rejected under § 103 over Khullar alone; and claim 27 was rejected under § 103 over Khullar in view of U.S. Patent No. 6,853,852 (Park).

DRAWING OBJECTION

Fig. 1 has been amended to add boxes labeled “RNC” in the GERAN block 12 and UTRAN block 14. Support for this amendment is found on page 4, at lines 24-30 of the specification. No new matter has been added.

This amendment was made to address the drawing objection.

REJECTIONS UNDER 35 U.S.C. §§ 102 AND 103

As a preliminary note, it is respectfully submitted that the obviousness rejection of claim 19 over Khullar, Sevanto, and Hurtta is in error, since Hurtta does not qualify as prior art against the present application. As noted in the previous Reply to Office Action, the present application claims the priority of U.S. Provisional Application Serial No. 60/238,843, filed October 6, 2000. The § 102(e) date of Hurtta is January 19, 2001, after the October 6, 2000 filing date of the provisional application. Therefore, withdrawal of the improper rejection of claim 19 over Khullar, Sevanto, and Hurtta is respectfully requested.

Claim 1 is not anticipated by Khullar. Specifically, the Office Action pointed to Fig. 3 and the multi-mode terminal device 300 depicted in Fig. 3 as being the wireless network controller of claim 1. 6/17/2005 Office Action at 3. The Office Action also pointed to column 7, lines 23-35, of Khullar as teaching that the base station 104 of Khullar can receive periodic reports from a mobile station 102 indicating a need or desire to enter a low power operating

mode. *Id.* at 4. Note that the base station 104, upon determining the optimal access technology, instructs the *mobile station* to handoff to the optimal access technology. In other words, in the column 7 passage of Khullar cited by the Office Action, what is occurring is that the base station receives a request from a mobile station to enter a low power operating mode, and in response to this request, the base station determines the optimal access technology and instructs the mobile station to handoff to this optimal access technology. Thus, in Khullar, it is the mobile station that selects one of plural access technologies – there is no teaching that the base station selects one of plural types of protocol stacks in *the base station* to use for communications over the air link between the wireless network controller and the mobile station. In fact, as explicitly stated by Khullar, “[u]sually, a BS 104 employs *only one* AT [access technology], but the MS 102 may employ more than one AT.” Khullar, 3:61-62. Therefore, clearly, Khullar does not teach a wireless network controller that receives an indicator in a message sent over an air link by a mobile station to establish a data transfer session in the wireless network, in combination with selecting one of plural types of protocol stacks in *the wireless network controller* to use for communications over the air link between the wireless network controller and mobile station based on the indicator. Claim 1 is thus not anticipated by Khullar.

Independent claim 20 is similarly allowable over Khullar.

Independent claim 9 was also rejected as being anticipated by Khullar. Applicant respectfully disagrees with this rejection. Claim 9 recites a method that includes receiving, in a wireless network controller, an indicator in a message sent by a mobile station to establish a data transfer session in the wireless network, and selecting one of plural types of protocol stacks to use for communications over an air link between the wireless network controller and the mobile station based on the indicator. Claim 9 defines this indicator as being a parameter used for contention resolution for distinguishing multiple mobile stations.

The Office Action cited column 3, lines 11-25, as teaching this feature of claim 9. 6/17/2005 Office Action at 4. Specifically, the Office Action stated that in Khullar, a determination of minimum radiated power level between different access technologies is a “contention resolution.” *Id.* This statement ignores specific language in claim 9, which states that receiving the indicator comprises receiving a parameter used for contention resolution for *distinguishing multiple mobile stations*. Determining a minimum radiated power level between

different access technologies is *not* contention resolution for distinguishing multiple mobile stations. Moreover, the construction of “contention resolution” made by the Office Action is improper, as determining radiated power of different access technologies is clearly not “contention resolution.” As explained by the present specification, and as understood by persons of ordinary skill in the art, contention resolution is a procedure for distinguishing between multiple mobile stations that are contending for a common resource, such as the same control channel. *See, e.g.*, Specification, p. 11, lines 5-9.

Based on the Office Action ignoring specific words of claim 9, and based on the improper construction of the term “contention resolution” made in the Office Action, it is respectfully submitted that the anticipation rejection of claim 9 is defective and should be withdrawn.

Independent claim 14 was also rejected as anticipated by Khullar, with the Office Action providing identical reasons as for the rejection of claim 9. Claim 14 recites a controller to perform contention resolution with a first type of mobile station using a first type of indicator, the controller adapted to communicate signaling according to a first wireless protocol with the first type of mobile station; and the controller adapted to perform contention resolution with a second type of mobile station using a second type of indicator, the controller adapted to communicate signaling according to a second wireless protocol with a second type of mobile station. The performance of contention resolution with different types of mobile stations using different types of indicators is clearly not taught by Khullar. The determination of the minimum radiated power level between different access technologies taught by Khullar cannot be considered contention resolution. Moreover, there simply is no teaching in Khullar of using a first type of indicator to perform contention resolution with a first type of mobile station, and using a second type of indicator to perform contention resolution with a second type of mobile station.

Therefore, claim 14 is not anticipated by Khullar. Independent claim 24 is allowable over Khullar for similar reasons as claim 14.

Independent claim 2 was rejected as being obvious over Khullar and Ejzak. Claim 2 has been amended to recite subject matter similar to claim 1, which Khullar clearly does not disclose. In view of the amendment of claim 2, it is respectfully submitted that claim 2 is not obvious over

Khullar and Ejzak, as the hypothetical combination of Khullar and Ejzak does not teach or suggest all elements of claim 2. *See M.P.E.P. § 2143 (8th ed., Rev. 2), at 2100-129.* Neither Khullar nor Ejzak teaches receiving, in a wireless network controller, an indicator in a message sent over an air link by a mobile station to establish a data transfer session in the wireless network, and selecting one of plural types of protocol stacks *in the wireless network controller* to use for communications over the air link between the wireless network controller and mobile station based on the indicator. A *prima facie* case of obviousness therefore cannot be established with respect to claim 2 over Khullar and Ejzak.

Independent claim 22 has similarly been amended, and therefore, is non-obvious over Khullar and Ejzak.

Independent claim 5 was rejected as being obvious over Khullar and Sevanto. Claim 5 recites receiving an indicator in a message sent by a mobile station to establish a data transfer session in a wireless network, and selecting one of plural types of protocol stacks to use for communications over an air link between the wireless network controller and mobile station based on the indicator, where the indicator is a Temporary Logical Link Identity (TLLI) structure having one of plural values.

The Office Action conceded that Khullar fails to disclose the TLLI structure. 6/17/2005 Office Action at 5. However, the Office Action relied upon Sevanto as teaching the TLLI structure, pointing specifically to column 4, line 17, of Sevanto.

It is respectfully submitted that the Office Action has failed to establish a *prima facie* case of obviousness over claim 5, as clearly there existed no motivation or suggestion to combine the teachings of Khullar and Sevanto to achieve the claimed invention. It is noted that the Office Action has apparently performed a keyword search for “TLLI” and has apparently found Sevanto as being a document that uses the term “TLLI.” Based on the appearance of the word “TLLI” in Sevanto, the Office Action stated that claim 5 is obvious over Khullar and Sevanto.

This obviousness rejection is clearly defective. Obviousness is not determined by merely finding keywords in prior art references and stating that if all keywords were found, the claim would be rendered obvious. What the Office Action must establish is that a person of ordinary skill in the art would have been motivated to combine the teachings of Khullar with Sevanto to achieve the claimed invention. TLLI, in the context of Sevanto, is used as an identity for a data

transmission connection. *See* Sevanto, 4:17-34. Clearly, there is absolutely no suggestion whatsoever anywhere in Sevanto that TLLI can be used as an indicator for selecting one of plural types of protocol stacks for communications over an air link. The obviousness rejection provided in the Office Action is a classic example of using impermissible hindsight to piece together un-related elements of prior art references in an attempt to deprecate the claimed invention. This is improper. *See, In re Fine*, 837 F.2d 1071, 1075, 5 U.S.Q.P.2d 1596 (Fed. Cir. 1988) (“One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.”).

In view of the foregoing, a *prima facie* case of obviousness has not been established with respect to claim 5.

Dependent claims are allowable for at least the same reasons as corresponding independent claims. In view of the allowability of base claims over the cited references, it is respectfully submitted that the obviousness rejections against various dependent claims have also been overcome.

Moreover, with respect to claim 26 (which depends from claim 24), the Office Action conceded that Khullar fails to teach contention resolution using an indicator to distinguish between different mobile stations. 6/17/2005 Office Action at 8. However, the Office Action took “official notice” that “multiple mobile stations with different modes” is old and well known to one skilled in the art.

Mobile stations with different modes are not recited in claim 26; therefore, it is unclear how the taking of such official notice has any bearing on the subject matter of claim 26. Moreover, Applicant respectfully submits the taking of official notice in this context is improper. Khullar clearly fails to teach contention resolution using an indicator to distinguish between different mobile stations, since all Khullar teaches is selecting different access technologies. If a reference exists that teaches a modification of Khullar to achieve the invention of claim 26, Applicant respectfully requests the production of such a reference. Absent this reference, the obviousness rejection of claim 26 over Khullar alone is clearly improper and should be withdrawn.

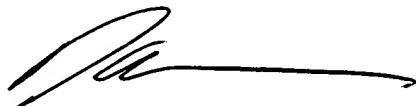
Dependent claim 28 is similarly non-obvious over Khullar alone.

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In view of the foregoing, allowance of all claims is respectfully requested. The Commissioner is authorized to charge any additional fees and/or credit any overpayment to Deposit Account No. 20-1504 (NRT.0102US).

Respectfully submitted,

Date: Sept. 19, 2005



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